



IAP12 Rec'd PCT/PTO 02 APR 2007

MAIL STOP PETITION
PATENT
8964-000031/US

IN THE U.S. PATENT AND TRADEMARK OFFICE

Applicant: Jiunn-Liang KO et al.

Appl. No.: 10/572,563

Group: Unassigned

Filed: March 17, 2006

Examiner: Unassigned

For: FUNGAL IMMUNOMODULATORY PROTEIN (FIP)
PREPARED BY MICROORGANISMS AND USES
THEREOF

PETITION UNDER 37 C.F.R. § 1.47(a)

April 2, 2007
April 1 = Sunday

Mail Stop Petition
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Pursuant to 37 C.F.R. § 1.47(a), Applicants petition to proceed with the prosecution of the above-identified application, which names Jiunn-Liang KO, Yu-Lu HUANG, Tzu-Chih CHEN, Hsu-Wei HUNG, Ho-Lung JIANG, Ching-Lung HU, Cheng-Chun KUAN, and Hsuan-Ju THOU, in the name of Jiunn-Liang KO, Yu-Lu HUANG, Tzu-Chih CHEN, and Hsuan-Ju THOU.

The basis for this Petition is that four of the named inventors, specifically Hsu-Wei HUNG, Ho-Lung JIANG, Ching-Lung HU and Cheng-Chun KUAN, have refused to sign the declaration and power of attorney in this application. In connection with this Petition, Applicants concurrently submit the Declaration of inventor Tzu-Chih CHEN (Exhibit 1) and the joint Declaration of Mr. David KO and Mr. Jash LIN (Exhibit 2) detailing the factual circumstances surrounding the refusal of Hsu-Wei HUNG, Ho-Lung JIANG, Ching-Lung HU, and Cheng-Chun KUAN to cooperate in the filing of this application.

The Declarations submitted herewith also detail the efforts by the inventors' representatives, Messrs. KO and LIN to secure the signatures of the recalcitrant inventors Hsu-Wei HUNG, Ho-Lung JIANG, Ching-Lung HU and Cheng-Chun KUAN and include

documentary evidence (Exhibit 3) regarding the efforts to obtain the signatures of the recalcitrant inventors.

Applicants submit a check in the amount of \$130.00 for the Petition fee.

The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, Dickey & PIERCE, P.L.C.

By: _____

John A. Castellano, Reg. No. 35,094
P O Box 8910
Reston, VA 20195
(703)668-8000

AM
JAC/GPB:ame



PATENT

THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 10/572,563

Filing Date: March 17, 2006

Applicant: Jiunn-Liang KO et al.

Group Art Unit: Unassigned

Examiner: Unassigned

Title: FUNGAL IMMUNOMODULATORY PROTEIN (FIP) PREPARED BY MICROORGANISMS AND USES THEREOF

Attorney Docket: 8964-000031/US

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION IN SUPPORT OF PETITION UNDER 37 CFR 1.42 - 1.47

Sir:

I, Tzu-Chih CHEN, hereby declare that:

Proof of Pertinent Facts Showing the Third Inventor, Hsu-Wei HUNG is Unavailable -
the undersigned hereby declares:

- (i) A copy of the application along with a declaration and assignment was mailed to Hsu-Wei HUNG at his last known address, 15F., No. 18, Alley 9, Lane 297, Yuantong Rd., Jhonghe City, Taipei County 235, Taiwan, R.O.C.
- (ii) The mail receipt proved that the information was sent to Hsu-Wei HUNG, but there is no response. See enclosure 1.

Proof of Pertinent Facts Showing the Fifth Inventor, Ching-Lung HU is Unavailable -
the undersigned hereby declares:

- (i) A copy of the application along with a declaration and assignment was mailed to Ching-Lung HU at his last known address, 3F., No.4, Alley 12, Lane 79, Sec.

2, Sinyi Rd., Jhongjheng District, Taipei City 100, Taiwan, R.O.C.

(ii) The mail receipt proved that the information was sent to Ching-Lung HU, but there is no response. See enclosure 1.

Proof of Pertinent Facts Showing the Sixth Inventor, Cheng-Chun KUAN is Unavailable – the undersigned hereby declares:

(i) A copy of the application along with a declaration and assignment was mailed to Cheng-Chun KUAN at his last known address, 4F., No.24-11, Lane 134, Sec. 3, Sinyi Rd., Da-an District, Taipei City 106, Taiwan, R.O.C.

(ii) The mail receipt proved that the information was sent to Cheng-Chun KUAN, but there is no response. See enclosure 1.

Proof of Pertinent Facts Showing the Fifth Inventor, Ho-Lung JIANG is Unavailable – the undersigned hereby declares:

(i) A copy of the application along with a declaration and assignment was mailed to Ho-Lung JIANG at his last known address, No.53-1, Neishihmen, Shihmen Township, Taipei County 253, Taiwan, R.O.C.

(ii) The mail receipt proved that the information was sent to Ho-Lung JIANG, but there is no response. See enclosure 1.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and imprisonment, or both, under Title 18, United States Code, § 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Declarant's
Signature:


(name)

Date: 2007.03.06



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Jiunn-Liang KO et al.

Application No.: 10/572,563

Int'l App. No.: PCT/CN2004/001044

Filing Date: March 17, 2006

Title: FUNGAL IMMUNOMODULATORY PROTEIN (FIP)
PREPARED BY MICROORGANISMS AND USES
THEREOF

Attorney Docket: 8964-000031/US

DECLARATION

Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314
Mail Stop **AMENDMENT**

We, David KO and Jash LIN, declare:

1. Our company, BIOBIZLAW INC., was retained by Yeastern Biotech Corporation to coordinate the filing of the above-noted patent application in the U.S. Patent and Trademark Office on behalf of the inventors.
2. Based on the inventor information provided, U.S. patent counsel provided us with a Declaration and Power of Attorney ("Declaration") and an Assignment document

New PCT National Phase Application
Docket No.: 8964-000031/US

naming Jiunn-Liang KO; Yu-Lu HUANG; Tzu-Chih CHEN; Hsu-Wei HUNG; Ho-Lung JIANG; Ching-Lung HU; Cheng-Chun KUAN and Hsuan-Ju THOU as the inventors.

3. On July 26, 2006, a copy of both the Declaration and the Assignment documents (collectively, the "formal documents") and the patent disclosure were forwarded to each of the named inventors at their last known mailing address. See Attachment 1

4. Included with the formal documents was a letter advising the inventors that they could verify the scope and accuracy of the disclosure by referencing, for example, application PCT/CN2004/001044 or published application WO/2005/070375, and noting the availability of these documents at www.wipo.int/pctdb/en/search-adv.jsp.

5. The letter provided to the inventors with the formal documents also explained the requirement under 37 C.F.R. § 1.64 that each of the actual inventors must execute an Oath or Declaration in compliance with 37 C.F.R. § 1.63 in order to complete the application. See Attachment 2

6. Also included with the formal documents was a reply form on which the inventor(s) could provide additional explanation in the event they were unwilling to sign the Declaration. See Attachment 3

7. Signed Declaration documents were subsequently received from inventors Jiunn-Liang KO; Yu-Lu HUANG; Tzu-Chih CHEN and Hsuan-Ju THOU, but signed Declaration documents were not received from Hsu-Wei HUNG; Ho-Lung JIANG;

Ching-Lung HU or Cheng-Chun KUAN.

8. In the absence of signed Declarations, Jash LIN, under the direction of David KO, initiated additional attempts to contact inventors Hsu-Wei HUNG; Ho-Lung JIANG; Ching-Lung HU and Cheng-Chun KUAN (hereinafter the "recalcitrant inventors") by telephone.

9. When contacted by Jash LIN, recalcitrant inventor Hsu-Wei HUNG advised that he refused to sign the Declaration until such time as a dispute regarding the assignment of rights in the invention with Yeastern Biotech Corporation is resolved to his satisfaction.

10. When contacted by Jash LIN, recalcitrant inventor Ho-Lung JIANG specifically advised that he refused to sign the Declaration until such time as a dispute regarding the assignment of rights in the invention with Yeastern Biotech Corporation is resolved to his satisfaction.

11. When contacted by Jash LIN, recalcitrant inventor Cheng-Chun KUAN specifically advised that he refused to sign the Declaration until such time as a dispute regarding the assignment of rights in the invention with Yeastern Biotech Corporation is resolved to his satisfaction.

12. Despite continuing efforts to contact Ching-Lung HU between September 29, 2006, and November 13, 2006, neither David KO nor Jash LIN was able to establish direct contact with the final recalcitrant inventor, Ching-Lung HU.

New PCT National Phase Application
Docket No.: 8964-000031/US

13. Efforts by David KO and Jash LIN to contact Ching-Lung HU included repeated calls to his most recent home phone, his cell phone and contacting certain of his known family have been unsuccessful in establishing direct with Ching-Lung HU. The outgoing voicemail message and Jash LIN's discussions with his family members confirmed the accuracy of our contact information.

14. Accordingly, despite confirmed contact with the recalcitrant inventors, signed Declaration or Assignment documents have not yet been received from recalcitrant inventors Hsu-Wei HUNG; Ho-Lung JIANG; Ching-Lung HU or Cheng-Chun KUAN.

15. We hereby declare that all statements made herein of our own knowledge are true, and that all statements made on information and belief are believed to be true; and further that these statements are made with the knowledge that willful false statements, and the like so made, are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: March 16, 2007

David Ko

David KO (President)

Date: March 16, 2007

Jash Lin

Jash LIN (Patent Engineer)



BIOBIZLAW INC.

5F-3, NO. 293-3, SEC. 2, FUSING SOUTH. ROAD.,

TAIPEI, TAIWAN 106, REPUBLIC OF CHINA

Tel: +886-2-27369139 Fax: +886-2-27363353

Title: Communication Report

March 06, 2007

Page: 1 + 25

Dear Examiner :

Our firm was authorized to communicate all inventors in the case of patent application No. 10/576,563 by Yeastern Biotech Corporation and to ask them to sign documents needed for the process of patent application, which were **ASSIGNMENT** and **DECLARATION AND POWER OF ATTORNEY**. We had tried to inform inventors by mail at July 27, 2006. In this **letter**(please see attachment 1), we had informed them of all application information included specification, claims and figures et al. by searching application no. PCT/CN2004/001044 or publication no. WO/2005/040375 at web site: www.wipo.int/pctdb/en/search-adv.jsp. We sent the two documents of **ASSIGNMENT**(please see attachment 2) and **DECLARATION AND POWER OF ATTORNEY**(please see attachment 3) enclosed by this letter. A **reply form**(please see attachment 4) was also sent with this letter for explaining why they would not like to sign the above two documents if they refuse to sign their names. However, there was no response from the following four inventors: Messrs HUNG, JIANG, HU and KUAN. The **mail receipt**(please see attachment 5) proved that we had tried to communicate these four recalcitrant inventors. In this mail receipt, Messrs HUNG, JIANG, HU and KUAN were marked by fluorescent marker.

After mail, we turned to get in touch with Messrs HUNG, JIANG, HU and KUAN by phone-calling and made a **phone record**(please see attachment 6). This phone record also showed that we had tried very hard to communicate with inventors, but Messrs HUNG, JIANG, HU and KUAN still had no wills to sign.

Sincerely yours,

David Ko

President

A handwritten signature in black ink that reads "David Ko".

cc : Jash LIN

Attachment 1

基律科技智財有限公司

BIOBIZLAW INC.

Page: 2

台北市復興南路二段二九三之三號五樓之三

5F-3, No. 293-3, SEC. 2, FUSING SOUTH ROAD,

TAIPEI, TAIWAN, REPUBLIC OF CHINA

Tel: +886-2-27369139 Fax: +886-2-27363353

(July 27, 2006)

2006年07月27日

案號：0269-YB-US

總頁數：2+8

通 知 函

收 文：發明人：柯俊良、周宣如、官振群、洪旭偉、江禾隆、胡慶隆、黃玉儒

發 文：基律科技智財公司 葛介正總經理

主旨：「利用微生物製備真菌免疫調節蛋白(FIP)及其用途」專利申請案

發明人_____先生/女士鈞鑒：

益生生技開發股份有限公司委託本公司代為處理本案，並委託本公司與本案所有發明人進行聯繫，下述事項係關各位發明人之權益，特此通知。

旨述專利申請案於 2004 年時進行 PCT 專利申請，由諸位並列共同發明人，目前本發明已進入國家階段--美國專利申請，並已完成申請手續。

本案所有相關文件，包括：專利說明書、專利申請範圍、圖式與其他申請文件等，皆可於下列網址獲得詳細資訊 (<http://www.wipo.int/pctdb/en/search-adv.jsp>，輸入本案申請號 PCT/CN2004/001044 或本案公開號 WO/2005/040375，按下『search』即可)。

依據美國專利局之要求，於專利申請時，須由發明人簽署聲明書與委託書 (Declaration and power of attorney)、與權利讓渡書 (Assignment)，並將簽名文件檢送美國專利局，如此申請手續與專利權利認定手續方可完備。煩請各位於上述兩份文件之個人姓名欄位處簽名，並請將簽名文件正本以掛號寄回本公司以利後續作業進行。

本申請案係為各位發明人共同努力之心血結晶，既然共列發明人，各位必定享有姓名表示權利；然而，本案申請內容係屬各位職務上之工作成果(特別是您當時為益生公司之員工)，權利歸屬於雇主所有。並請容本公司提醒各位，切勿因個人因素而影響他人應有之權益，敬請配合上述文件簽署。

基律科技智財有限公司

BIOBIZLAW INC.

台北市復興南路二段二九三之三號五樓之三

5F-3, NO. 293-3, SEC. 2, FUSING SOUTH ROAD,

TAIPEI, TAIWAN, REPUBLIC OF CHINA

Tel: +886-2-27369139 Fax: +886-2-27363353

倘若各位實不願簽署或有任何難處，也敬請於『案件回覆單』上清楚註明理由後郵寄或傳真至本公司；又，各位對於文件內容有任何疑慮、或有任何不便之處，敬請與本公司聯繫，本公司樂意替各位服務。

本公司須重申，切勿因個人因素而影響他人應有之權益，上述事項敬請配合；並請注意，所有聯絡事項與回覆意見，本公司都將存檔備查。

相關文件，煩請各位於 2006年8月15日前回覆本公司，本公司地址為：106 台北市大安區復興南路二段 293-3 號 5 樓之 3，電話：(02)2736-9139，傳真：(02)2736-3353。

隨函檢附：

附件 1：案件回覆單，共 1 頁。

附件 2：委託書(Declaration and power of attorney)，共 4 頁。

附件 3：讓渡書(Assignment)，共 3 頁。

倘對上述有任何疑問或進一步指示，敬請來電告知。

順頌 商祺

葛介正

基律科技智財公司 總經理

葛介正

cc: 黃慧軒

Attachment 4
Page : 1

基律科技智財有限公司
BIOBIZLAW INC.

台北市復興南路二段二九三之三號五樓之三

5F-3, NO. 293-3, SEC. 2, FUSING SOUTH ROAD,

TAIPEI, TAIWAN, REPUBLIC OF CHINA

Tel: +886-2-27369139 Fax: +886-2-27363353

案件回覆單 (Reply Form)

通知日期 : 2006 年 07 月 27 日
(July 27, 2006)

聯絡人 : 黃慧軒

本所案號 : 0269-YB-US

申請案號 : US 10/552,900 (PCT/CN2004/001044)

案件名稱 : 利用微生物製備真菌免疫調節蛋白(FIP)及其用途

申請日 : 2004.09.14

申請國家 : PCT--美國

申請人 : 益生生技開發股份有限公司

性質 : 發明人文件簽署

	同意辦理文件簽署。 (Agree Sign)
	不同意辦理文件簽署。 (Not Agree Sign) 請務必說明理由 : (Reason)
	其它 :

回覆者 : _____ (簽章)

回覆日期 : 95 年 月 日

※請將此案件回覆單打 V 填妥後，於 2006 年 8 月 15 日 前傳真或郵寄回本所，以利本所作業，感謝您的配合。

Attachment 5

Page: 1

98-00-00-23

收寄局碼 種類碼
(由收寄局填寫)
中華民國 95 年 1 月 28 日
寄件人名稱: Jash
寄件人代表

中華民國郵政
交寄大宗 限時掛號 函件存根
快捷郵件

(July 28, 2006)

詳細地址:

電話號碼:

順序號碼	掛號號碼	收 件 人		是回函是航 否執記空否 (V) (V) (V)	是印刷 否	重量	郵資	備考
		姓 名	寄達地名 (或地址)					
0	049816	林郁玲	112					
1	049817	黃玉儒	402					
2	049818	胡慶龍	100					Ching-Lung HU
3	049819	江秉隆	213					Ho-Lung JIANG
4	049820	洪旭偉	235					Hsu-Wei HUNG
5	049821	官振群	106					Cheng-Chun KUAN
6	049822	周宣如	108					
7	049823	柯俊良	402					
8	049824	吳明峰	413					
9	049825	陳志豪	802					
10	049826	林志雄	110					
11	049827	方祖豪	110					
12	049828	陳子晉	221					
13								
14								
15								
16								台北 44 東 10044
17								
18								
19								
20								

(1)此單請寫 1 式 2 份。

(2)限時掛號、掛號函件與快捷郵件不得同列一單，請將標題塗去其二。

(3)函件背面應註明順序號碼，並按號碼次序排齊，滿 20 件為 1 組分組交寄。

上開 限時掛號

掛號函件 / 共
快捷郵件

件照收無誤

(4)將本埠與外埠函件分別列單交寄。

(5)郵件應妥為封裝，如為小包或快遞郵件，內裝易脆物品者，請於封面正面加

貼「脆弱郵件小心搬運」紅標籤。

(6)如有證明郵資、重疊必要者，應由寄件人自行在聯單相關欄內分別註明，並

結項總郵資，交郵局經辦員逐件核對。

(7)日後如須查詢，應於交寄日起 6 個月內查詢。如上網查詢，請參考本表左上

角收寄局碼及種類碼輸入完整 14 碼 (掛號號碼 + 收寄局碼 + 郵件種類碼)。

(8)掛號函件補償金額每件最多不逾新台幣 575 元。

(9)錢鈔或有價證券請利用報值或保價交寄。

寄件人簽章:

查詢網址: <http://www.post.gov.tw>

320,000 本 (50 份 × 2 聯) 94.2.170 × 250mm (50g/ m² 非碳紙) (伍泰) 保管 2 年

經辦員簽署

郵局郵戳

Attachment 6

Page : 2

PHONE RECORD

In this case inventors included Hsu-Wei HUNG, Ho-Lung JIANG, Ching-Lung HU and Cheng-Chun KUAN, who did not sign the documents of DECLARATION AND POWER OF ATTORNEY and ASSIGNMENT account for their reason of refusing to sign.

Inventor: Hsu-Wei HUNG	Date: 2006.09.29 11:58														
Phone Content:															
Hsu-Wei HUNG showed his opinions that before the adscription of related rights between Yeastern Biotech CO., Ltd. and himself are settled, he had no willing to sign the two document of DECLARATION AND POWER OF ATTORNEY and ASSIGNMENT.															
Inventor: Ching-Lung HU	Date:														
Phone Content:															
We can't make contact with Mr. HU. We had try many ways include cell-phone, home-phone, mail and messages to his family, but all in vain. The fallows are the time that we had ever called Mr. HU.															
<table><thead><tr><th><u>TIME</u></th><th><u>RESPONSE</u></th></tr></thead><tbody><tr><td>2006.09.29 14:00 ~ 17:00</td><td>no answer</td></tr><tr><td>2006.10.02 15:00</td><td>no answer</td></tr><tr><td>2006.10.05 14:30</td><td>no answer</td></tr><tr><td>2006.10.16 11:40</td><td>no answer</td></tr><tr><td>2006.10.17 10:30</td><td>no answer</td></tr><tr><td>2006.11.13 09:35</td><td>no answer</td></tr></tbody></table>		<u>TIME</u>	<u>RESPONSE</u>	2006.09.29 14:00 ~ 17:00	no answer	2006.10.02 15:00	no answer	2006.10.05 14:30	no answer	2006.10.16 11:40	no answer	2006.10.17 10:30	no answer	2006.11.13 09:35	no answer
<u>TIME</u>	<u>RESPONSE</u>														
2006.09.29 14:00 ~ 17:00	no answer														
2006.10.02 15:00	no answer														
2006.10.05 14:30	no answer														
2006.10.16 11:40	no answer														
2006.10.17 10:30	no answer														
2006.11.13 09:35	no answer														
Inventor: Cheng-Chun KUAN	Date: 2006.09.29 13:47														
Phone Content:															
Cheng-Chun KUAN showed his opinions that before the adscription of related rights between Yeastern Biotech CO., Ltd. and himself are settled, he had no willing to sign the two document of DECLARATION AND POWER OF ATTORNEY and ASSIGNMENT.															

Inventor: Ho-Lung JIANG

Date: 2007.02.06 17:14

Phone Content:

Ho-Lung JIANG showed his opinions that before the adscription of related rights between Yeastern Biotech CO., Ltd. and himself are settled, he had no willing to sign the two document of DECLARATION AND POWER OF ATTORNEY and ASSIGNMENT.

Recorders: David KO

Jash LIN

Date: 2007.02.27